

**PARTICIPATING ADDENDUM  
WESTERN STATES CONTRACTING ALLIANCE  
WIRELESS COMMUNICATION SERVICES AND EQUIPMENT  
MASTER PRICE AGREEMENT  
12-00115**

THIS Price Agreement is made this 1st day of August, 2003, between the STATE OF WASHINGTON, acting by and through the Washington State Department of Information Services ("DIS"), with offices at 2411 Chandler Court SW, PO Box 42445, Olympia WA 98504-2445, for the use and benefit of the state agencies and political subdivisions as provided for and defined herein, and Nextel West Corp., d/b/a Nextel Communications, Inc. with offices at 6700 Jefferson NE, Building D, Albuquerque, New Mexico 87109, hereinafter referred to as "Contractor". Contractor and the State may be referred each individually as a "Party" and collectively as the "Parties".

**1. Scope:** The Washington State Department of Information Services (DIS) is the Participating Entity under this Participating Addendum and its jurisdiction for purposes of this agreement includes as authorized purchasing entities (Purchaser), any Washington State agency with properly delegated authority to purchase the Products and Services that are the subject of this Master Price Agreement, or any political subdivision (including public schools, colleges or universities) of the state of Washington or non-profit organization with the authority to purchase such Products and Services, who have a properly executed Interlocal Cooperative Agreement (Customer Service Agreement) with DIS. Employees may not purchase products or services for their personal use under authority of this agreement, provided however, nothing contained in this section shall be construed to prohibit Contractor from offering specialized plans pursuant to Section 51 (P).

**2. DIS and Contractor agree to the following changes:**

**a) Paragraph 1 *Definitions* replace the definition of "Purchasing Entity" and with the following:**

"Purchasing Entity" under this Participating Addendum shall be defined as a governmental or nonprofit entity that has entered into an Interlocal or Customer Service Agreement with DIS. Individual employees shall not be considered authorized Purchasers.

**b) Paragraph 2 *Scope of Work***

Delete the first paragraph and substitute the following:

The Contractor shall deliver vendor branded wireless communication services and products to procuring agencies in accordance with the terms of this agreement. This agreement is a "Price Agreement". Accordingly, the Contractor shall provide services or products only upon the issuance and acceptance by Contractor of valid "Purchase Orders". Purchase Orders may be issued to purchase services or to purchase products listed on the Contractor's SES.

**c) Paragraph 6 Payment Provisions**

- (i) Delete subparagraph B *Payment of Invoice* and substitute the following:

Payment shall be submitted to the contractor at the address shown on the invoice. Payment shall be tendered to the Contractor within thirty (30) days after purchasing entity's receipt of a properly payable invoice. After the thirtieth day from purchasing entity's receipt of a properly payable invoice, Contractor may invoice Purchaser one percent (1%) per month on the amount overdue or a minimum of \$1.00. The purchasing entity shall make a good-faith effort to pay within thirty (30) days after receipt of a properly payable invoice, however purchasing entities identified by DIS as requiring more time to make payment shall have their account categorized as "Slow-Pay" by contractor. Slow Pay purchasing entities shall accrue no late fees or interest until sixty (60) days after receipt of a proper invoice. Payments may be made via a purchasing entity's "Purchasing Card".

Purchasers will pay equipment and support charges on a monthly basis, in arrears.

- (ii) Add subparagraph E *Overpayments to Vendor*

Vendor shall refund to Purchaser the full amount of any erroneous payment or overpayment under this Contract within thirty (30) days' written notice. If Vendor fails to make timely refund, Purchaser may charge Contractor one percent (1%) per month on the amount due, until paid in full.

- (iii) At the end of the text in subparagraph D *Invoices*, add the following:

Contractor will submit properly itemized invoices that contain the following information, as applicable:

- (a) Purchaser's name and address; Purchase/Field Order number;
- (b) Contractor name, address, phone number, and Federal Tax Identification Number;
- (c) The Master Price Agreement number (12-00115) shall appear on all invoices, bills of lading, packages, and correspondence relating to this agreement.
- (d) Description of Products, including price, quantity ordered, model and serial numbers;
- (e) Description of Service, including price;
- (f) Applicable discounts;
- (g) Sub-total invoice price, excluding taxes, for Equipment with line items for all services, any overages and taxes.
- (h) Applicable taxes;
- (i) Total invoice price;
- (j) Payment terms.

- (iii) At the end of subparagraph D, add subparagraph E *Rebates and Refunds* as follows:

Under no circumstances may refund or rebate incentives be given to individual Purchaser employees. Any refunds or rebates and related forms must be issued to the purchaser at the address specified on the Purchase Order or Field Order.

**d) Paragraph 8 Termination**

Add after the first sentence in subparagraph A *Termination for Convenience* the following:

At any time DIS may terminate its Participating Addendum, in whole or in part, by giving the Contractor thirty (30) days written notice.

**e) Paragraph 12 Patent, Copyright, Trademark and Trade Secret Indemnification**

Delete the text "To the extent Contractor is indemnified and held harmless by the equipment manufacturer, the" of the first Paragraph. Add to subparagraph A (2) the following:

Cooperate with and agree to use its best efforts to encourage the Office of the Attorney General of Washington to grant Contractor sole control of the defense and all related settlement negotiations.

**f) Paragraph 18 Services and Product Delivery**

After the first sentence in the paragraph add the following:

All packages must be accompanied by a packing slip that identifies all items included with the shipment. Contractor's delivery receipt must be signed by an authorized representative of Purchaser for all deliveries made hereunder.

**g) Paragraph 20 Records and Audit**

Replace the entire text of the paragraph with the following:

A. Contractor will maintain, or, in its sole discretion, supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized under this PA. Contractor shall retain all such records for six (6) years after the expiration or termination of this PA or until all audits initiated within the six (6) years have been completed, whichever is later. Records involving matters in litigation related to this PA shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration or termination of this PA, whichever is later.

B. At Purchaser's expense, no more than once annually during the term of this PA, with thirty (30) calendar days advance written notice to Contractor, and during the normal business hours of Contractor, Contractor shall make its non-confidential record solely relating to the provision of Products and Services hereunder available to Purchaser for examination, inspection, copying, or audit by personnel so authorized by WSCA, the TSD Contract Administrator and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or PA, when applicable. Contractor shall be responsible for any audit exceptions or disallowed costs that are agreed upon by the parties or determined in accordance with Section 68 *Disputes* incurred by Contractor or any of its Subcontractors.

**h) Add to Paragraph 22 Use of Subcontractors the following:**

There are currently no approved subcontractors under this Participating Addendum.

**i) Add to Paragraph 27 Enforcement of Agreement the following new paragraph:**

If any term or condition of this Participating Addendum or the application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Participating Addendum being declared severable.

**j) Add to Paragraph 32 *Change in Contractor Representatives***

Contractor agrees to appoint a primary in-state representative for purchasers. The appointed primary representative under this Participating Addendum with the state of Washington is:

Nextel Communications  
Harvey Salzberg  
Senior Sales Manager  
10545 Willows Road NE  
Redmond, WA 98052  
253-896-3426

Nextel Communications  
Joe Piksa  
Government Account Executive  
5660 Pacific Highway East  
Tacoma, WA  
253-896-3423

In the event the appointed primary representative should change, Contractor shall provide written notice to DIS within fifteen (15) days of the change, including any updated contact information.

**k) Replace Paragraph 34 *Confidentiality* with the following:**

A. Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes ("Confidential Information"). Confidential Information shall consist of but is not limited to names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, agency source code or object code, agency security data, information which can be otherwise used to identify a particular individual or other information. Contractor agrees to hold Confidential Information in strictest confidence, and treat the Confidential Information with the same degree of care utilized to protect Contractor's confidential information, and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Purchaser's express written consent or as provided by law. Purchaser's Confidential Information shall not be disclosed to any person or entity other than employees or agents of Contractor who need to know the Information and in those instances only to the extent justifiable by that need. Contractor shall ensure that all such entities and personnel comply with the terms of this Agreement and agrees Subcontractors shall sign a nondisclosure agreement, regarding the terms of which have been previously approved by Purchaser.

B. Immediately upon expiration or termination of this Contract, Contractor shall, at Purchaser's written request: (i) certify to Purchaser that Contractor has destroyed all Confidential Information; or (ii) return all Confidential Information to Purchaser; or (iii) take whatever other reasonable steps Purchaser requires of Contractor to protect Purchaser's Confidential Information.

C. Purchaser reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Contract. Any third parties, except agencies of the Washington State Government, acting on behalf or at the direction of Customer to monitor, audit or investigate shall be subject to prior approval by Contractor and may be required to execute Contractor's standard Non-Disclosure Agreement prior to examining, inspecting, copying or auditing Contractor's records. Nothing contained herein shall be construed to prevent a third party from disclosing the results of such monitoring, investigation, or audit to DIS.

D. Violation of this section by Contractor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, or monetary damages available by law.

**l) Remove paragraph 43 *Lease Agreements* in its entirety.**

**m) Add to paragraph 45 *Notification* the following:**

The primary government contact for this Participating Addendum is as follows:

**State of Washington  
Department of Information Services  
Attn: TSD Contract Administrator  
PO Box 42445  
Olympia, Washington 98504-2445  
Voice: (360) 902-3301  
Fax: (360) 664-0711**

**Nextel Communications  
Government Accounts  
Danielle Catalfo  
8040 South 48<sup>th</sup> Street  
Phoenix, AZ 85044  
Voice: 602-757-7533**

**n) Add to paragraph 46 *Administration Reporting and Fees* the following:**

All purchases made under this PA are subject to a DIS Administration Fee, to be collected by Contractor and remitted to DIS. The Administration Fee shall be .8% or .008. The purchase price is defined as total invoice price less sales tax. The Administration Fee shall be invoiced by Contractor to all Purchasers as a separate detailed line item on Purchaser's invoice. Contractor shall remit the Administration Fee directly to the TSD Contract Administrator, along with the PA Activity Report. The check shall be payable to Department of Information Services on a quarterly basis.

B. Contractor shall submit to the Washington Primary Contact a quarterly report to include the following information:

- (i) This Master Price Agreement (12-00115);
- (ii) Each Purchaser making purchases during that quarter;
- (iii) The total invoice price, excluding sales tax for each Purchaser;
- (iv) The sum of all invoice prices, excluding sales tax, for all Purchasers; and
- (v) The DIS Administration Fee.

The Activity Reports and the DIS Administration Fee shall be due on a quarterly basis in accordance with the following schedule:

<u>Quarter Ending</u>	<u>Report Due</u>
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

The Administrative Fee shall be based upon the units in service during the quarter under this Agreement. Contractor shall submit this report according to the layout specified by the Washington Primary Contact.

Upon request by DIS, Contractor shall provide, in the format requested, the contact information for all Purchasers during the term of the Master Contract.

This report may be corrected or modified by the Washington Primary Contact with subsequent written notice to Contractor.

**Quarterly reports are required even if no activity occurred.**

C. Failure of Contractor to remit the Activity Report together with the Administration Fee may be considered a failure to perform on the part of Contractor, which may result in DIS terminating this Participating Addendum with Contractor. If the performance issues are resolved, DIS, at its option, may reinstate a Contractor's participation.

**o) Add to paragraph 47 *Credit Handling* the following:**

Under no circumstances may refund or rebate incentives be given to an individual Purchaser employee. Any refunds or rebates and related forms must be issued to the Purchaser at the address specified on the Purchaser Order or Field Order.

**p) Delete paragraph 51 *Extensions* in its entirety and replace with the following:**

The terms agreed to in this Participating Addendum shall not preclude Contractor from offering specialized government employee rate plans to government employees provided that:

A. The pricing and terms for Contractor's rate plans offered in connection with Government Employee Programs are established at Contractor's sole discretion, and can be amended, altered, or revoked by Contractor at any time without regard to or effect on this Participating Addendum; and

B. Contractor shall not be obligated to charge administrative fees, remit such fees to the State, or report sales of products and services under such Government Employee Programs to the State; and

C. Contractor shall not condition, link or otherwise associate eligibility for the Government Employee Programs to purchases of Products and Services by the State or any authorized Purchasing Entity under this Participating Addendum.

D. Contractor agrees that the marketing and promotion of the Government Employee Program to employees of authorized Purchasing Entities will be clearly separated from promotion of government-use Products and Services offered pursuant to this Participating Addendum and that printed marketing materials promoting any Government Employee Program will not reference this Participating Addendum or the WSCA Master Agreement.

E. Individuals purchasing under any Government Employee Program may not utilize the same website designated for purchasing Products and Services under the Participating Addendum.

F. All costs, charges, and fees associated with the Products and Services provided as part of the Government Employee Program shall be solely the responsibility of the individual employee purchasers and may not be billed to any governmental entity included as an authorized Purchasing Entity within the terms of the Participating Addendum.

G. Contractor agrees to utilize commercially reasonable efforts to direct all invoices associated with the Government Employee Program to the corresponding end users' non-government addresses.

**q) Add new paragraph 65 *Publicity/Marketing***

A. The award of this Contract to Contractor is not in any way an endorsement of Contractor or Contractor's products by DIS and shall not be so construed by Contractor in any advertising or other publicity materials.

B. Contractor agrees to submit to DIS, all advertising, sales promotion, and other publicity materials relating to this Contract or any Product furnished by Contractor wherein the name of DIS, or Purchaser is mentioned, language is used, or Internet links are provided from which the connection of Purchaser's name therewith may, in DIS' judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of DIS *prior* to such use.

C. Contact information for individual end users of the Services, including without limitation, names, addresses, email addresses and telephone numbers, shall not be used for the purposes of marketing non-contracted products or services, either by Vendor or third parties, without the explicit consent of such end users.

D. Following prior written permission from Contractor, use of the logo may be on the DIS Web Site or on printed materials. Any use of Contractor's Logo by DIS must comply with and be solely related to the purposes of this Contract and any usage guidelines communicated to DIS from time to time. Nothing contained in this Contract will give DIS any right, title, or interest in or to Contractor's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Vendor.

**r) Add new paragraph 66 *Vendor's Proprietary Information***

Contractor acknowledges that Purchaser is subject to chapter 42.17 RCW and that this Participating Addendum shall be a public record as defined in chapter 42.17 RCW. Any specific information that is claimed by Contractor to be Proprietary Information must be clearly identified as such by Contractor. To the extent consistent with chapter 42.17 RCW, Purchaser shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view Contractor's Proprietary Information, Purchaser will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, Purchaser will release the requested information on the date specified.

**s) Add new paragraph 67 *Industrial Insurance Coverage***

Prior to performing work under this Participating Addendum, Contractor shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Participating Addendum. Purchaser will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for Contractor, or any Subcontractor or employee of Contractor, which might arise under the industrial insurance laws during the performance of duties and services under this Participating Addendum.

**t) Add new paragraph 68 *Disputes***

In the event a bona fide dispute concerning a question of fact arises between Purchaser and Contractor and it cannot be resolved between the parties, after sixty (60) days either party may initiate the dispute resolution procedure provided herein.

The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) Business Days. The initiating party shall have three (3) Business Days to review the response. If after this review a resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute.

- (i) If the dispute cannot be resolved after three (3) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the Dispute Resolution Panel within the next three (3) Business Days.



- (ii) The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.
- (ii) Each party shall bear the cost for its panel member and share equally the cost of the third panel member.

Both parties agree to be bound by the determination of the Dispute Resolution Panel.

Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible.

Purchaser and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.

If the subject of the dispute is the amount due and payable by Purchaser for Services being provided by Contractor, Contractor shall continue providing Services pending resolution of the dispute provided Purchaser pays Contractor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Contractor, in good faith, believes is due and payable.

**u) Add new paragraph 69 *Outage Notification***

When Contractor receives notice from the National Operations Center (NOC) that a network outage has occurred which may affect voice, text, or data services, Contractor shall make all commercially reasonable efforts to notify DIS by Fax or email.

**v) Add new paragraph 70 *Interference***

In the event of a documented instance of harmful interference between the State's radio systems and those operated by Contractor, Contractor agrees to exercise commercially reasonable efforts to mitigate such interference in cooperation with the State Interoperability Executive Committee (SIEC).

**w) Add new paragraph 71 *Order Document as follows:***

All purchase/field orders issued by purchasing entities within the jurisdiction of this Participating Addendum shall include Master Price Agreement 12-00115.

This Participating Addendum and the Master Price Agreement together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Participating Addendum and the Master Price Agreement, together with its exhibits, shall not be added to or incorporated into this Participating Addendum or the Master Price Agreement and its exhibits, by any subsequent or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Participating Addendum and the Master Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms.

IN WITNESS WHEREOF, the parties have executed this Participating Addendum as of the date of execution by both parties below.

**Approved**

State of Washington  
Department of Information Services

  
Signature

Michael B. Emans

Print or Type Name

8/1/03

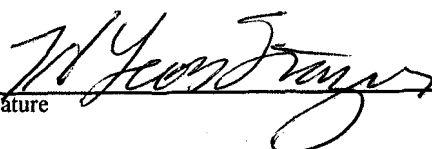
Date

Assistant Director, Telecommunication Services  
Division

Title

**Approved**

Nextel West Corp.

  
Signature

H. Leon Frazier

Print or Type Name

7/30/2003

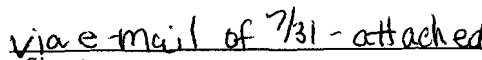
Date

Vice President- Public Sector

Title

**Approved as to Form**

State of Washington  
Office of the Attorney General

  
Signature

Chip Holcomb

Print or Type Name

Assistant Attorney General

Title

Date

## Josephs, Dana (DIS)

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**From:** Holcomb, Chip (ATG)  
**Sent:** Thursday, July 31, 2003 10:08 AM  
**To:** Josephs, Dana (DIS)  
**Subject:** RE: Nextel WSCA PA

Consider it approved as to form.  
If you need more, let me know,  
Chip Holcomb  
Senior Counsel, Attorney General's Office  
P.O. Box 40108  
905 Plum St., Bldg. 3  
Olympia, WA 98504-0108  
voice: (360)753-9671  
fax: (360) 586-3593  
email: chiph@atg.wa.gov

-----Original Message-----

**From:** Josephs, Dana (DIS)  
**Sent:** Tuesday, July 29, 2003 2:56 PM  
**To:** Holcomb, Chip (ATG)  
**Subject:** Nextel WSCA PA

Chip-

Please find attached the final WSCA Purchasing Addendum with Nextel Communications for your approval as to form. This resembles the AT & T Wireless and Sprint PCS PA's which have been completed during the past year or so. I've also attached the underlying contract, as amended with the state of New Mexico for your reference. If you have any questions at all, please do not hesitate to contact me. Thank you for your assistance and advice during the course of this negotiation.

Sincerely,

*Dana Josephs, Contract Specialist*  
*DIS, Telecommunication Services Division*  
*(360) 725-4245*

<< File: PA\_final.doc >>      << File: WSCA 2.pdf >>

**Amendment Number 01**  
**to**  
**Washington State Participating Addendum**  
**For**  
**WSCA Master Price Agreement 12-00115**  
**for**  
**Wireless Communication Services and Equipment**

This Amendment ("Amendment") shall amend and revise that certain Participating Addendum dated August 1, 2003, by and between the State of Washington, **Department of Information Services** ("DIS") and **Nextel West Corp., d/b/a Nextel Communications** ("Contractor") under the WSCA Master Price Agreement 12-00115 ("Agreement"), and shall only affect business conducted under the State of Washington Participating Addendum.

1. In accordance with Provision 24 of the Agreement, the Parties hereby agree to amend Paragraph 32 (j) to clarify Contractor's use of Authorized Representatives.

The following paragraphs shall be added to the existing Provision 32 (j), Change in Contractor Representatives:

"Upon written notification to the DIS Contract Administrator, Contractor may appoint authorized dealer representatives ("Authorized Representatives") to serve as the principal point of contact for Local Government entities to purchase equipment and initiate service with Contractor. For equipment provided pursuant to this Provision 32 (j), Authorized Representatives shall provide an invoice to Local Government entities that is in compliance with the requirements of Provision 6, Section (c) subsection (iii). Recurring invoices for Services shall be provided by Contractor.

Contractor Representative, as referenced herein, shall continue to receive orders for State governmental entities and shall serve as a secondary point of contact for Local Government entities. Subsequent services received for the equipment purchased will be invoiced directly by Contractor. Contractor will, in turn, include this activity as part of its Activity Report, currently reported on a quarterly basis."

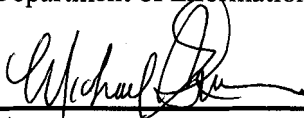
Vendor shall maintain and update, a list of Nextel Authorized Representatives on a mutually agreeable Internet website, available to DIS and Customers alike. This list shall be maintained and updated for the duration of the Washington Participating Addendum.

2. All other provisions of the Agreement remain in full force and effect. This Amendment Number 01 shall be effective as of the latest signature date below.

3. In the event of any inconsistencies between the terms and conditions contained in the Agreement and the terms and conditions contained in this Amendment, the terms and conditions in this Amendment shall control.

**Approved**

State of Washington,  
Department of Information Services

  
\_\_\_\_\_  
Signature

Michael B. Emans  
\_\_\_\_\_  
Print or Type Name

Assistant Director, TSD  
\_\_\_\_\_  
Title

7/19/04  
\_\_\_\_\_  
Date

**Approved**

Nextel West Corp. d/b/a Nextel Communications

  
\_\_\_\_\_  
Signature

H. Leon Frazier  
\_\_\_\_\_  
Print or Type Name

Vice President  
\_\_\_\_\_  
Title

07/06/2004  
\_\_\_\_\_  
Date